

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD**

IN THE MATTER OF)	
INTERNATIONAL ALLIANCE OF)	
THEATRE AND STAGE EMPLOYEES)	CASE NO. 13-RC-140853
LOCAL 125,)	
)	
Petitioners,)	
)	
and)	
)	
HORSESHOE HAMMOND, LLC,)	
)	
Respondent.)	

EMPLOYER’S REQUEST FOR REVIEW

Pursuant to Section 102.67(b) of the National Labor Relations Board’s Rules and Regulations, Horseshoe Hammond, LLC (“Horseshoe” or “the Employer”), by and through its undersigned counsel, Fisher & Phillips LLP, within the deadline as extended, timely files this request for review of Regional Director Peter Sung Ohr’s Decision and Direction of Election (“Decision”) issued December 23, 2014.

Horseshoe’s request is premised on the erroneous inclusion the Senior Entertainment Technician, who is a 2(11) supervisor, in a unit of Entertainment Technicians.

I. PRELIMINARY STATEMENT

The Horseshoe Casino is in the business of offering entertainment and gaming. It is located in Hammond, Indiana. While Horseshoe may primarily be known for its casino, it offers a wide selection of entertainment choices. The major entertainment area for music and other events at Horseshoe is called ‘The Venue’. The Venue is a self-contained unit within the facility, consisting of a main stage area with seating for approximately two-thousand five hundred

individuals. The Venue location also contains other connected and supporting spaces, including offices, dressing rooms and storage areas, all designed to aid the entertainment productions provided at the facility. On November 13, 2014, the International Alliance of Theatre and Stage Employees, Local 125, AFL-CIO (collectively “the Union”) petitioned to represent Entertainment Technicians employed by Horseshoe at the Venue.

A hearing was held on December 1, 2014, in Chicago, Illinois, before Hearing Officer Melinda Hensel. At the hearing, Horseshoe presented one witness: David Feeley, Director of Entertainment Operations. The Petitioner presented one employee witness: Richard Curtis, the Senior Entertainment Technician.

Following the hearing, Horseshoe submitted a post-hearing brief, in which it argued that the Senior Entertainment Technician position should be exempted from the unit as the Senior Entertainment Technician is a 2(11) Supervisor under the Act.

On December 23, 2014, the Regional Director issued his Decision, which included the Senior Entertainment Technician in the unit. In reaching this clearly erroneous decision, the Regional Director concluded that the Senior Entertainment Technician lacks the requisite supervisory authority so as to warrant his exclusion from the unit. He also concluded that the Senior Entertainment Technician is similar to a Lead Maintenance Technician, principally relying on *Peco Energy Co.*, 322 NLRB 1074 (1997).

II. GROUNDS FOR REQUEST FOR REVIEW

The Board will grant a request for review on one or more of the following grounds:

- (1) A substantial question of law or policy is raised because of (i) the absence of, or (ii) a departure from, officially reported Board precedent.
- (2) The Regional Director’s decision on a substantial factual issue is clearly erroneous on the record and such error prejudicially affects the rights of a party.

(3) The conduct of the hearing or any ruling made in connection with the proceeding has resulted in prejudicial error.

(4) There are compelling reasons for reconsideration of an important Board rule or policy.

§ 102.67, Rules and Regulations. In this instance, Horseshoe seeks review of the Regional Director's Decision on the second ground.

There are compelling reasons for the Board to reconsider its decision. The Regional Director's finding that the Senior Entertainment Technician belongs in the petitioned-for unit – particularly as he possesses supervisory power over the lower employees, Entertainment Technicians –is clearly erroneous and prejudicially affects Horseshoe. In so ruling, the Regional Director ignored overwhelming evidence establishing the Senior Entertainment Technician as a 2(11) Supervisor.

III. BACKGROUND FACTS

The Regional Director determined that the Senior Entertainment Technician was not a 2(11) supervisor based on a set of facts which erroneously led to that conclusion. With respect to both the criteria for a 2(11) supervisor, as well as secondary indicia, ample evidence was presented at the hearing to support a finding that Curtis should be excluded as a 2(11) supervisor.

The Senior Entertainment Technician position is relatively new, created in 2012. (Tr. 26-27). Curtis interviewed for the position in March 2013 and has held the position up to the current time. (Tr. 119, Er. Ex. 1). Both Horseshoe and Curtis considered his move from Entertainment Tech (hereinafter, "Techs") to Senior Entertainment Technician as a promotion. (Tr. 17, 53). After his promotion, to compensate for his assumption of greater responsibilities than the Techs, Curtis was granted an immediate approximately \$4.00 per hour wage increase. (Er. Ex. 1). When Horseshoe created the Senior Entertainment Technician position, it created a new job/accounting code for it. The Senior Entertainment Technician's Job Code is H16. The

Job Code for Techs is H15. (Tr. 65, U.Ex. 1). The rationale for the difference in the Job Code numbers is that, with more supervisory responsibility, a higher Job Code number had to be assigned. (Tr. 54).

At the time the Senior Entertainment Technician position was filled by Curtis, the Company developed a new job description for this position. (Er. Ex. 2). That Job Description lists “Essential Duties and Responsibilities” for the position, including, but not limited to:

- Responsible for supervising and working all aspects of audio, visual lighting and special events for Horseshoe Hammond Casino.
- Responsible for overseeing the technical aspects of all entertainment venues . . .
- Works as Audio, Video, Lighting, Rigging or Stage Technician, as needed.
- Works with Production Manager on advancing technical and non-technical aspects of concerts and special events around the property, including liaising with outside production companies and entertainer representatives to ensure required technical and production elements for upcoming concerts and events are met.
- Monitors performances to ensure productions meet standards.
- Acts as a role model and coaches while developing employees using a consistent, approachable demeanor, and clearly articulating [his] expectations.
- Provides direction and support of all staff to achieve Horseshoe Casino Hammond’s goals and objectives through the fair application of all policies.
- Strives to improve and streamline departmental operations, through the continuous assessment of policies and procedures, work processes and program effectiveness/value.
- Allocates resources to outlets that create value to our guests and to Horseshoe Casino Hammond.

- Works with the Production Manager to issue appropriate recognition and rewards to individuals and groups when consistent superior performance is attained.
- Ensures that each team member clearly understands and is held accountable for their respective performance expectations.

(Er. Ex. 2).

Curtis' supervisory duties are extensive and, therefore, typically consume the majority of his time. (Tr. 88). Curtis admitted that, since he has taken over the duties of the Senior Entertainment Technician, his tech duties have taken a backseat to his supervisory objectives:

Q. Do you do any job duties that are the same as they were before you took on the senior status?

* * *

A. [Curtis] Rigging, electrical, audio, repair on items that I'm technically knowledgeable on, which would be audio, some carpentry, stuff like that . . .

Q How much of your time since you've taken on senior status out of a week is occupied with those kinds of duties you just described?

* * *

A. I would say fifty percent – maybe a little less, 40%.

(Tr. 88-9).

Curtis confirmed that he spends much less than half his time on audio duties and the majority of his time as a supervisor of the Techs. Specifically, Curtis' supervisory duties can be verified by examination of the (non-exhaustive) list of functions discussed below:

(i) Curtis can Discipline the Techs

The Company employs a progressive discipline policy for all employees. (Tr. 40). One of the levels of progressive discipline in the Company's policy is an oral warning. *Id.* The

Company's discipline policy states that written warnings and above must be signed off by managers. (Tr. 42).

In this department, Curtis has the authority and ability to recommend discipline, including up to written warnings and higher:

Q. . . . the senior entertainment tech has the ability to make recommendations for written disciplines or higher?

A. Yes.

Q. And to your knowledge, as far as you know, those recommendations have been followed by the Employer?

A. Yes.

(Tr. 42)

Not only has Curtis recommended written warnings and suspensions, he has also independently issued oral warnings to Techs as part of Horseshoe's progressive discipline policy:

Q. To your understanding, can you describe what, if any, ability the senior entertainment tech has to issue oral warnings to employees?

A. He absolutely has that ability to issue an oral warning to any one of the full-time entertainment techs at any given time pending the outcome of those entertainment tech's work or miscue.

Q. Does he have to check in with you or Jeff prior to giving an oral warning to –

A. No.

Q. -- entertainment techs?

A. No.

Q. To your knowledge, would oral warnings given by the senior entertainment tech be used in the progressive discipline process?

A. Yes.

(Tr. 41).

Curtis readily agreed, on cross-examination, that he has the authority to issue oral warnings to his Techs:

Q. Is it your understanding from your job description that you can give an oral warning to entertainment techs?

A. [Curtis] Yes.

(Tr. 152).

Curtis testified that in his supervisory role, he has recommended discipline for Techs' poor performance:

Q. Let's say that your lighting tech guy, he sucks and he's not doing a very good job – would it be your expectation that you're following what that employee is doing and report to Jeff and recommend a corrective action for that employee's work?

A. [Curtis] In that specific instance, yes that has happened, as well as other employees.

(Tr. 141).

If a Tech has performance issues, Curtis testified that he recommends corrective action, and furthermore, that he has previously recommended corrective action in cases of poor Tech performance. (Tr. 141). Horseshoe's disciplinary forms clearly state, "Corrective discipline is based on the recommendation of the supervisor." (U. Ex. 3).

(ii) Releasing employees from work

On a show or production night, the Techs' schedules are typically not set to end at specific times. (Tr. 40). Instead, Techs continue to work until all work is done. (Tr. 47, 138). It is Curtis who ultimately makes the decision as to when Techs are to clock out and go home. (Tr. 138, 154). Not only does Curtis have the final decision regarding the length of his employees' days, he also does not release his employees until he is assured that all work tasks are

satisfactorily completed. If they are not, Curtis has the authority to require employees to stay on the job.

Q. Mr. Curtis, when you release the employees from work at the end of the night, what, if anything, do you do to determine that it's okay for them to go?

A. [Curtis] They just ask me if they can leave as long as the tasks are completed.

Q. So you actually have to take some action to go around and check and make sure the tasks they are assigned to are done?

A. Well I do that.

Q. Do you have the discretion to make someone stay?

A. Yeah.

(Tr. 154).

(iii) Assignment of work

The Senior Entertainment Tech has the independent authority – and consistently exercises his independent authority – to assign work to his Techs. (Tr. 19). Specifically, while Curtis may not typically set performance schedules, he is required to assign work on a daily basis to meet every production's needs:

Q. It states that he is responsible for supervising and working all aspects of audio, video, lighting and special events for the Horseshoe Casino. Can you describe for the Hearing Officer what you believe or what your understanding of that sentence is?

A. Again, the other full-time entertainment techs know to go to Rich, as well as Rich coordinates all information back to them on what needs to be done not only on event day, but from a daily task-list standpoint . . .

(Tr. 23).

The Production Manager, Jeff Clayton, works in tandem with Curtis to establish daily work assignments. (Tr. 50). Curtis is given full discretion to add to the list of tasks for the Techs. (Tr. 19). Curtis admitted that he takes it upon himself to solicit his Techs concerning areas that may need attention. He then supplements the Techs' task lists based on suggestions he receives. (Tr. 94). Once a production event task list is determined, Curtis retains full discretion to assign out all those tasks as he sees fit, including prioritization of work to be performed. (Tr. 21-2, 24). Curtis testified that he takes the "initiative" to go through the list of tasks and to add duties where he sees fit. (Tr. 130).

On a regular basis, Curtis may be the highest ranking Horseshoe representative present on a shift. (Tr. 20). In such instances, Curtis is expected to supervise his crew and to perform all the duties that would naturally fall within his role, as well as Mr. Clayton's duties. (Tr. 20).

Curtis is also responsible for, and expected to, pull Techs from some regular duties and assign them to different tasks to meet a show's priorities. (*See* Feeley's testimony stating that Curtis "... has that ability to allocate not only physical resources in terms of equipment, but also to allocate people and personnel to those outlets to properly maintain and support that particular entertainer." (Tr. 28, 50); *see also*, Testimony of Curtis stating that the responsibility for making work assignments to Techs rests on his shoulders. (Tr. 130).

Because Curtis serves as the supervisor for other Techs who set up the shows, he often does no physical work (audio). (Tr. 37). When there are technical questions regarding set up, those questions go to Curtis, who has the independent authority to act on his decisions regarding assignment of work. (Tr. 37, 83-4).

(iv) The Senior Entertainment Technician manages call-offs and calling in of Additional Labor

The Company has a PTO program referred to as “Life Happens.” While any employee can take a “Life Happens” day off, the request for a day is to be agreed to by a supervisor. In The Venue, a Tech will call either the Production Manager or Curtis to receive an okay for a “Life Happens” day:

Q. . . . can you describe a situation where the senior entertainment tech would grant time off to employees or can you describe such a situation to the Hearing Officer?

A. The situation would be if a full-time entertainment tech needed to call off, whether it was a sick issue or any other issue, we have what’s called a life happens day, where you can just call in and say I need to be off today, life happens.

Rich Curtis has the ability to and has received calls from full-time entertainment technicians for that particular need.

* * *

Q. When Jeff isn’t present, does the senior entertainment technician have the independent ability to use his or her judgment to grant the employee time off if they call in?

A. Yes.

(Tr. 45).

Despite Curtis’ claim on direct examination that he has no responsibility for handling “Life Happens” days, he later testified that, when the Production Manager is not present, he does make such decisions:

Q. ...Jeff isn’t there, they don’t call you to let you know what’s going on?

A. [Curtis] If it’s not a scheduled vacation and they just call off that day?

Q. Right.

A. They do call me.

Q. And if they are coming in late, hey, traffic stinks, they're going to call you?

A. If Jeff is not there, right.

(Tr. 136-7).

Not only does Curtis have the authority to take a Tech's call to get a day off, he also has the authority to contact a third party, outside labor provider to supply additional employees when he believes it is required:

Q. . . . if needed, the senior entertainment tech could contact an outside –

A. Yes.

Q. -- labor provider?

A. Yes.

(Tr. 46).

(v) Providing feedback to the Production Supervisor and Upper Management concerning Tech performance.

Curtis' job description clearly states that he has the responsibility to ensure that every one of his team understands, and is held accountable for, their performance expectations. (Er. Ex. 2).

Curtis acts as a front line supervisor, providing valuable information used in the evaluation of his Tech's performances:

Q. Can you describe for the Hearing Officer what your understanding of the senior entertainment tech's role is with regards to holding other team members accountable?

A. I lean on Rich, even if Jeff is present that particular day, to hold that team accountable not only in the execution of their tasks, but in their general behavior. Rich has the ability to then feed that information up to Jeff Clayton to where Rich's input can and does and has had a direct impact in review time period for any given entertainment tech.

(Tr. 30).

Curtis agrees with this statement, testifying that he is responsible for Techs' performance issues, and does advise his employees when their performance may be lagging. (Tr. 141).

IV. ARGUMENT

In the DDE, the Regional Director held that the record established that the Senior Entertainment Technician is not a supervisor within the meaning of the Act and is therefore appropriately included in the Unit. (D&DE, p. 11). The Regional Director found that the Senior Entertainment Technician does not have the authority or independent discretion to be a 2(11) supervisor under the Act. (D&DE, p. 8). The Regional Director made such a finding erroneously, by either misapplying facts in evidence and/or completely ignoring other facts in evidence that clarify or refute other evidence relied on by the Regional Director. At times, testimony supportive of a finding of supervisory status coming from Curtis was ignored.

A. The Evidence in the Record does not Comport with the Regional Director's Findings

In several instances, evidence adduced at hearing demonstrates that Curtis exercises 2(11) supervisory functions, and also meets other secondary indicia as well. In this case, the Regional Director erroneously found that evidence in the record did not indicate supervisory status under the Act. Horseshoe asserts the evidence did demonstrate the following:

1. Full-time Entertainment Technicians report to Curtis

The DDE states that, "...Curtis does not have any direct reports." (DDE, p. 3). This statement contradicts the evidence in the record.

Feeley states that:

"Q. Who reported to the senior entertainment tech on a day-to-day basis?"

A. The other full-time entertainment technicians."

(Tr. 19). That testimony is uncontroverted.

Instead, the Regional Director relies on an organizational chart that was introduced by the Union with no foundation to determine its accuracy. (Un. Ex. 1). It does not indicate that the Techs do not report to Curtis. Furthermore, the only testimony in the record regarding the organizational chart comes from Feeley, who stated that it was made by human resources for unknown purposes, without input from the Venue personnel. (Tr. 74). The chart does not even clearly indicate that Techs do not report to Curtis.

The balance of the testimony in this matter demonstrates that the Techs report directly to Curtis, but that testimony was ignored based upon an organizational chart which does not, and is not meant to, accurately reflect Curtis' status.

2. Curtis has a different job code classification than the Techs

The DDE states that Curtis and the Techs have the same job code classification "H". (DDE, p. 3). In contrast, the Regional Director points out that Feeley is job code "L" and Clayton is job code "S".

The record is clear that Curtis has a different job code. Feeley testifies that, "He (Curtis) has a different job code." (Tr. 53). Feeley goes on to explain that the higher number assigned to Curtis is indicative of, "...more responsibility from a seniority or supervisory standpoint." (Tr. 54).

While it is true that Curtis and the Techs share the same letter "H" in their job code classification, the Regional Director's characterization omits the key testimony that there is a different job code (H16 for Curtis and H15 for Techs), and the reason for the different code is that Curtis is a supervisor. (Tr. 65).

3. Curtis authorizes overtime and releases Techs from their duties

The Regional Director stated that if overtime is required, it is authorized by Jeff Clayton and not Curtis. (DDE, p. 4). This conclusion is in contradiction to the testimony given at the hearing.

Techs cannot reject overtime. (Tr. 48). If the production manager is not present, the Techs are released for the day by Curtis. *Id.* Even if the production manager is present, Curtis may be the supervisor to release the Techs to go home. *Id.* Curtis testified that he both checks the work of each Tech to see if it is complete at the end of each day, and if he is not satisfied with the Techs' work, he can authorize that Tech to remain on shift. (Tr. 154). Curtis did not testify that he must check with Clayton to authorize overtime in situations where he requires Techs to stay. He stated he did **not** have to check in with Clayton. (Tr. 154).

Accordingly, the Regional Director's finding that Curtis cannot authorize overtime or dismiss Techs for the day is contrary to the evidence in the record coming directly from Curtis.

4. Curtis spends the majority of his time supervising Techs

The Regional Director's findings with regard to the amount of time Curtis testified he supervises Techs minimize the impact of what he actually testified to with respect to the breakdown of his duties. The Regional Director breaks down the amount of time Curtis testified he spends supervising Techs to 40-50% on non-show days and 25% on show days. (DDE, p. 4). This statement contradicts and distorts the facts in the record.

Curtis spends 60% of his time supervising Techs or on duties other than regular 'Tech' duties. When asked by counsel for the Union about the amount of time he spends on Tech duties since he has taken 'senior status', Curtis stated, "...40 percent." (Tr. 89). The Regional Director's parses testimony (using days and non-show days) to distort this simple fact. There is

no breakdown of show days and non-show days anywhere associated with that question. This is important as the reason Curtis does 60% less 'Tech duty' now that he has 'senior' status, is that he is using 60% of his time to supervise the Techs. This fact is conveniently pushed aside by conflating disparate statements in the record and fuzzy math.

5. Curtis assigns the daily tasks to the Techs

The Regional Director concluded that Curtis merely divvies up a self-explanatory list of daily tasks, and that it is a routine, clerical function. (DDE, p. 5). Curtis' own testimony contradicts that finding.

Curtis agrees that the, "...responsibility for making those [Tech] assignments rests on his shoulders." (Tr. 130). The Regional Director's conclusion that the task list and the assignments from the task list to the Techs do not involve independent judgment are incorrect. Curtis testified that when he gets the daily task list, he determines the order in which they get done. (Tr. 132).

To state that the direction of Techs to daily duties is self-explanatory is also incorrect. Obviously, Curtis would not assign a lighting Tech to perform audio Tech duties. But the Regional Director completely missed the fact that certain items need to be prioritized as the Techs perform their work, and the evidence shows that responsibility for prioritization of Techs' day to day duties falls upon the shoulders of Curtis.

6. Curtis is held responsible for the Techs' performance

The Regional Director concluded that that there was no evidence that Curtis was held accountable or subject to adverse consequences for deficiencies in the work of the Techs. (DDE, p. 5). The Regional Director ignored the clear testimony given at the hearing that Curtis is held responsible for Techs' performance, as he is their supervisor.

Curtis testified to just that premise:

Q. Do you ensure that each team member clearly understands and is held accountable for the respective performance expectations when they get their documents from the act about what they need to have done?

A. [Curtis] I suppose I would, yes.

* * *

Q. But you would agree with me that you are, at least at the end of the day, held responsible for doing that task?

A. Yes.

(Tr. 127).

Moreover, Feeley testified that he also holds Curtis ultimately responsible for problems that occur in production. (Tr. 26, 30-1). He stated that, “if something were to go awry, ultimately Jeff would go to Rich Curtis and say what’s wrong with that particular situation or why has it come up multiple times with that particular employee.” (Tr. 31).

The Regional Director’s conclusory finding that “no evidence was presented”, is refuted by the testimony of both Horseshoe and Curtis that he is held responsible for the Techs’ performance.

7. Curtis directs and assigns Techs and resources as needed each day

The Regional Director intimated that Curtis cannot assign Techs and resources throughout the day. The Regional Director stated that if there is a new task, if it was a “general labor thing” Curtis would just grab “whoever was around.” (DDE, p. 5). This description takes great liberties with Curtis’ testimony regarding his authority to assign.

Curtis is responsible for assigning Techs to various tasks, even outside of that Tech's area of expertise. He testified that if there is a 'small task' that is not specific to a Tech's area of expertise, he will assign it to the "person that's most available." (Tr. 110). He said if someone is near him when he needs the task done, he will just "grab them", otherwise he will call the Techs on his radio to assign them. (Tr. 111). Curtis stated that there is a 'utility guy' whom he also assigns to perform tasks. *Id.* Curtis makes all the decisions to assign Techs to the projects he determines need attention during the course of the work day.

Clearly, the Regional Director gave short shrift to Curtis' ability to supervise and assign Techs throughout each work day. The evidence actually demonstrates Curtis' independent authority to supervise the Techs.

8. Curtis can discipline and effectively recommend discipline of Techs

The Regional Director concluded that Curtis has no ability to discipline Techs. (DDE, p. 6). In doing so, the Regional Director disregarded Curtis' own testimony that he can both effectively recommend discipline and that he has the ability to give oral warnings to Techs, which are part of Horseshoes' disciplinary policy and go into the Tech's personnel record.

Curtis unequivocally stated that it is his understanding from the job description that he is authorized to give Techs oral warnings. (Tr. 152). Moreover, Curtis testified that he already recommended discipline greater than an oral warning for a poor performing Tech, and that the production manager followed the recommendation. (Tr. 141).

None of this testimony by Curtis is cited by the Regional Director. Instead, for example, the Regional Director states that the Employer has not provided any examples of Curtis giving an oral warning. (DDE, p. 6). It does not follow that an example of discipline need be given when

the employee states that he understands he has the authority to discipline. The standard for Horseshoe in this case seems to be inexplicably high.

9. Neither Clayton nor Curtis can remove points given for attendance issues

The Regional Director emphasizes that with respect to the Employer's point system for attendance and absences, Clayton can make adjustments to the point system and Curtis cannot. (DDE, p. 7).

In yet another example of the Regional Director taking liberties with the evidence in this case, the Regional Director failed to consider the fact that Curtis, after testifying that Clayton could remove points, admitted later that he actually did not know whether Clayton could excuse points on the attendance policy or not. (Tr. 137).

Feeley testified regarding the point system and that it is an attendance system that cannot be altered by most management at Horseshoe. (Tr. 59). Therefore, there is little to no significance to the Regional Director's finding that Curtis could not remove attendance points, as it is a system untouched by none but the highest management. The Regional Director instead followed Curtis' guess as to Clayton's authority, which was later proven incorrect, because it fit the overall finding better. This is a small point, but emphasizes the many glaring inaccuracies in the overall analysis of the evidence by the Regional Director.

10. Curtis' second key allows him greater facility access and control of the Venue

The Regional Director concluded his factual analysis with a statement that Curtis had two keys that Techs did not have, but it merely gave him access to storage rooms and IT closets. (DDE, p. 7). The Regional Director's cursory assessment did not even address the importance of Curtis' extra keys, in terms of his access to facilities the Techs do not need. *Id.*

Feeley testified that Curtis is given almost unfettered access in the Venue. (Tr. 35). The reason Curtis has such a key is to ensure his faster access to certain areas - requirements that regular Techs do not need. (Tr. 35). Curtis uses that key to open the doors for a show. Feeley states that "...Rich has the ability for an event where he is supervising to give the command to open the doors." (Tr. 36). None of the other Techs are entrusted with this level of authority. It is Curtis on whom Horseshoe relies to make those independent decisions, including perhaps the most important -- when to start the show.

B. The Regional Director's Evidentiary Findings Prejudiced Horseshoe

Ultimately, based upon his factual findings, the Regional Director found that Curtis was not a 2(11) supervisor under the Act.

The Regional Director concluded that Curtis lacked any meaningful discretion in making work assignments, does not provide guidance or instruction on how to complete their tasks, has no authority to give oral warnings or otherwise effectively recommend discipline and essentially works as a lead employee who can be included in the unit with the Techs. (DDE, pp. 9-10).

The facts in this case conclusively prove that Curtis is a 2(11) supervisor. Possession of any of the twelve indicia places Curtis in the 2(11) supervisor class. *Ohio Power Co. v. NLRB*, 176 F.2d 385 (6th Cir. 1949). The record is clear that minimally Curtis: 1) assigns Techs, 2) disciplines Techs, and 3) directs Techs. Each of these responsibilities, indicative of 2(11) supervisory status, Curtis performs using his independent judgment. They also are more than routine or clerical in nature -- otherwise literally anyone could do Curtis' job. That is not the case. Curtis' expertise and leadership is relied upon to prepare for a show.

There is no disagreement that the production manager is present only thirty minutes a day. This crew of Techs is under a busy schedule preparing for shows at Horseshoe Casino. It is

unimaginable to believe that Curtis does nothing to assign and direct the Techs on a day to day basis. That is the primary reason the position was created in 2012.

The Regional Director's conclusion that Curtis does nothing other than what he is told by the production manager ignores not only Feeley's testimony describing the expectations for the position he created, but also the testimony of Curtis himself.

In this case, there is enough uncontroverted evidence to support a finding that Curtis meets at least one of the indicia under 2(11) to be considered a supervisor. Furthermore, Curtis meets many of the secondary indicia supporting the premise that he is a 2(11) supervisor, such as a different job code and higher pay than Techs. The Regional Director's findings appear to flow from a pre-ordained decision with facts conveniently interpreted or ignored in a manner to support that decision.

This decision prejudiced Horseshoe, and as such, Horseshoe requests a review.

IV. CONCLUSION

For the foregoing reasons, the Board should grant the Employer's request for review in this matter.

Respectfully submitted,

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CERTIFICATE OF SERVICE

This is to certify that a true copy of the foregoing *Request for Review* was forwarded, via electronic filing and regular United States Mail, postage prepaid, this 6th day of January, 2015 to:

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/s/ Paul Burmeister _____
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